

DRAFT FINAL STATEMENT OF REASONS

Section 87764(b)(1)

Specific Purpose:

This subsection is adopted to specify the procedure on how and who to serve the written notice of the order to suspend new admissions.

Factual Basis:

This subsection is necessary for clarity and consistency to ensure licensees are properly notified of the Department's order to suspend new admissions. This subsection requires personal delivery to the licensee to ensure the licensee is aware of the suspension order.

Modification:

Following the May 9, 2018, public hearing, CDSS is amending subsection 87764(b)(1) to add the additional language "at the facility site," for clarity and consistency to specify a location in which the notice of the order to suspend new resident admissions will be served.

Section 87764(c)(2)

Specific Purpose:

This subsection is adopted to specify what information is required to be in the notice issued by the Department when the Department orders a suspension of new resident admissions in a facility.

Factual Basis:

This subsection is necessary for clarity and consistency and will require the date the suspension order is effective to be listed on the notice to suspend new admissions. This ensures the licensee is aware of the date the suspension order becomes effective.

Modification

Following the May 9, 2018, public hearing, CDSS is amending subsection 87764(c)(2) to correct a punctuation error by adding a period "." at the end of this subsection.

Section 87764(c)(4)

Specific Purpose:

This subsection is adopted to specify what information is required to be in the notice issued by the Department when the Department orders a suspension of new resident admissions on a facility.

Factual Basis:

This subsection is necessary for clarity and consistency and requires a factual description of the nature of the deficiency fully stating the way the deficiency presents a direct and immediate risk to the health safety or personal rights of a resident. This information ensures the licensee is aware of the deficiency that caused the suspension order.

Modification:

Following the May 9, 2018, public hearing, CDSS is amending subsection 87764(c)(4) into subsection 87764(c)(4)(A). Under the new subsection 87764(c)(4)(A), CDSS is adding the language “In the case of a suspension of new admissions under (a)(1),” to clarify this subsection applies to the circumstance under which a suspension of new admissions may be ordered, i.e., a deficiency that presents a direct and immediate risk to the health, safety, or personal rights of the resident and the licensee fails to correct the deficiency immediately as set forth in subsection 87764(a)(1).

Additionally, CDSS is modifying an uppercase “A” into a lowercase “a” for grammatical purposes.

Section 87764(c)(4)(B)

Modification:

Following the May 9, 2018, public hearing, CDSS is adopting subsection 87764(c)(4)(B) to include in the notice of the order to suspend new admissions, the additional set of circumstances under which a suspension of new admissions may be ordered, i.e., the failure to pay assessed fines as set forth in subsection 87764(a)(2). This subsection is necessary for clarity and consistency and requires a factual description of the failure to pay the assessed fine and exhaustion of appeal rights. This information is necessary to ensure licensees are aware of the fine or fines that caused the suspension order.

CDSS is amending this subsection in response to testimony provided by California Advocates for Nursing Home Reform (CANHR), comment 1, indicating that the proposed regulation be amended to include the additional set of

circumstances under which a suspension of new admissions may be ordered, i.e., the failure to pay assessed fines as set forth in subsection 87764(a)(2).

Section 87764(e)

Specific Purpose:

This subsection is adopted to specify the standard that suspension of new admissions go into effect immediately upon notice and in the case where the licensee chooses to appeal the suspension of new resident admissions at their facility, the suspension will remain in effect throughout the appeal process, consistent with H&S Code section 1569.545(f).

Factual Basis:

This subsection is necessary for clarity and consistency with the H&S Code section 1569.545 which specifies that the suspension ban shall be in effect immediately and shall not be stayed pending the facility's appeal or request for review.

Modification:

Following the May 9, 2018, public hearing, CDSS is amending subsection 87764(e) to delete the language "continue pending any appeal review" and to add the language "not be stayed and remains in effect throughout the appeals process." This added language aligns with Health and Safety Code section 1569.545(f) which states the suspension of new admissions "shall not be stayed pending the facility's appeal or request for review." This modification is necessary for clarity and consistency purposes and will specify the suspension of new resident admissions will continue and shall not be stayed during the appeals process.

Additionally, CDSS is making a grammatical change; the word "date" is changed from singular to plural with the addition of an "s".

CDSS is amending this subsection, in response to testimony provided by CANHR, comment 2, to add language for clarity and consistency and to align this subsection with the intent of Health and Safety Code section 1569.545(f) and to change the word "date" to the plural form "dates".

Section 87764(f)(1)

Specific Purpose:

This subsection is adopted to specify by what means the suspension order may be lifted by the Department.

Factual Basis:

This subsection is necessary for clarity and consistency with the H&S Code section 1569.545 which indicates the suspension of new resident admissions will remain in effect until the Department determines the correction of all the deficiencies as required in the notice of suspension. If the facility does not demonstrate to the Department the correction of all the deficiencies as required in the notice, the Department will conduct a follow up visit within 10 working days following the latest date of correction specified in the notice to determine compliance.

Modification:

Following the May 9, 2018, public hearing, CDSS is amending subsection 87764(f)(1) to delete the word “working” and replacing it with the word “business.” This modification will provide clarity and consistency throughout the regulation text.

Section 87764(f)(2)

Specific Purpose:

This subsection is adopted to specify by what means the suspension order may be lifted by the Department.

Factual Basis:

This subsection is necessary for clarity and consistency. In situations where a suspension ban is in place because of unpaid civil penalties, the suspension ban will be lifted when the Department determines the facility has paid applicable civil penalties assessed by the Department. The suspension order will be lifted if formal payment arrangements have been made with the Department. In circumstances where the licensee fails to comply with the formal payment arrangements made with the Department, the suspension order may be reinstated.

Modification:

Following the May 9, 2018, public hearing, CDSS is amending subsection 87764(f)(2), to add the additional language, “during the period of payment compliance” and to delete “or” and replaced it with “but otherwise”. This change is necessary for clarity and consistency purposes to specify that in the case of a suspension of new admissions under subsection 87764(a)(2), when licensees are in compliance with the payment arrangements made the suspension order will remain lifted but will be otherwise reinstated for failure to comply with payment arrangements.

Section 87764(g)

Specific Purpose:

This subsection is adopted to specify the procedure to notify the licensee of the order to remove the suspension of new resident admissions ban.

Factual Basis:

This subsection is necessary for clarity and consistency to ensure licensees are properly notified of the written order to remove the suspension on new admissions. This subsection requires personal delivery to the licensee. Personal delivery ensures the licensee is aware the suspension has been removed.

Modification:

Following the May 9, 2018, public hearing, CDSS is amending subsection 87764(g) to add the language “within two (2) business days” to specify a timeframe in which the Department shall notify licensees in writing of the order to remove the suspension of new resident admissions. This modification is necessary for clarity and consistency to ensure licensees are notified within two (2) business days of the order to remove the suspension of new resident admissions.

CDSS is also adding the additional language “at the facility site,” for clarity and consistency to specify a location in which the notice of the order to remove the suspension of new admissions will be served to the licensee.

CDSS is amending this subsection, in part, in response to testimony provided by California Assisted Living Association (CALA), comment 3, to specify a timeframe in which to notify a licensee that a suspension of new resident admissions has been lifted.

Section 87764(h)

Specific Purpose:

This subsection is adopted to specify the standard under which the Department may impose a Temporary Suspension Order if the licensee violates the suspension of admission order by admitting any new resident during the term of the order of suspension. H&S Code section 1569.50 allows the Department to impose a Temporary Suspension Order.

Factual Basis:

This subsection is necessary to ensure licensees abide by the suspension order. Without the deterrent of a Temporary Suspension Order, the licensee will have little reason to abide by the suspension order.

Modification:

Following the May 9, 2018, public hearing, CDSS is amending subsection 87764(h) to correct a punctuation error. CDSS will remove the comma “,” between the words “Temporary Suspension Order” and “pursuant”.

Section 87765(a)

Specific Purpose:

This section is adopted to specify the appeal procedure for licensees related to the suspension of new admissions. The H&S Code section 1569.545(e) gives the Department authority to develop an appeal procedure.

Factual Basis:

This subsection is necessary for clarity and consistency with the H&S Code section 1569.545(e) which indicates that a licensee may appeal a suspension of new admissions to the director of the Department.

This subsection specifies that the appeal request must be made on a form provided by the Department, the timeframe in which the appeal request must be made, and designates the Deputy Director of CCLD as the person conducting the appeal review.

Modification:

Following the May 9, 2018, public hearing, CDSS is amending subsection 87765(a) to remove the language “On a form provided by the Department”. This change is necessary for clarity and consistency purpose as the Department does not currently require licensees to use a departmental form when requesting an appeal. CDSS is also deleting the word “working” and replacing it with the word “business.” This change will provide clarity and consistency throughout the regulation text.

CDSS is modifying an uppercase “A” into a lowercase “a” for grammatical purposes.

CDSS is adding the word “ten” before the numerical “10” and added parentheses to the numerical number “(10)”. These modifications are necessary for clarity and

consistency purposes. This change is consistent with the numerical formatting used in this regulation package.

Section 87765(b)

Specific Purpose:

This section is adopted to specify the appeal procedures for licensees related to the suspension of new admissions. The H&S Code section 1569.545(e) gives the Department authority to develop an appeal procedure.

Factual Basis:

This section is necessary to ensure the licensee includes all available supporting documentation when requesting an appeal. This will assist in expediting the hearing process and ultimately allow for a timely final determination.

Modification:

Following the May 9, 2018, public hearing, CDSS is amending subsection 87765(b) to include the additional language “the basis for which the appeal is requested and”. This amendment is necessary for clarity and consistency purposes to ensure licensees include, with the request for appeal, the basis for which they are requesting an appeal. This will assist in expediting the hearing process and ultimately allow for a timely final determination.

CDSS is also moving the language “with the request for appeal” to after the language “The licensee shall include” for grammatical purposes.

Section 87765(d)

Specific Purpose:

This section is adopted to specify appeal procedure for licensees related to the suspension of new admissions. The H&S Code section 1569.545(e) gives the Department authority to develop an appeal procedure.

Factual Basis:

This subsection is necessary to establish a procedure by which the Deputy Director will conduct the review and render a decision. Additionally, this subsection is necessary to specify the appeal will be amended or dismissed if the Deputy Director determines the suspension order was not issued in accordance with applicable statutes and regulations of the Department in a timely manner. This is necessary to ensure licensees are given due process and are not unjustly impacted by the suspension order if the order was not made in accordance with applicable regulations and statutes.

Modification:

Following the May 9, 2018, public hearing, CDSS is amending subsection 87765(d) to delete language “in a timely manner” and add the language “within five (5) business days from receipt of the written appeal”. This modification is necessary for clarity and consistency purposes to ensure that licensees have a specified timeframe in which the Deputy Director shall conduct a review and render a final decision.

Additionally, CDSS is changing the word “existed” from past tense to present tense form “exist” with the deletion of “ed”. This change is necessary to clarify when the Deputy Director determines that the suspension order was not issued in accordance with applicable statutes and regulations of the Department, or that other circumstances generally exist, rather than circumstances existing in the past, as previously written, the Deputy Director shall have the authority to amend or dismiss the suspension order.

CDSS is amending this subsection, in part, in response to testimony provided by CALA, comment 5, to provide a specific timeframe in which the Deputy Director shall conduct a review and render a final decision on an appeal.

Section 87765(e)

Specific Purpose:

This section is adopted to specify the appeal procedure for licensees related to the suspension of new admissions. The H&S Code section 1569.545(e) gives the Department authority to develop an appeal procedure.

Factual Basis:

This subsection is necessary for clarity and consistency to ensure licensees are properly notified of the Department’s order to suspend new admissions. This subsection requires personal delivery to the licensee to ensure the licensee is aware of the suspension order.

Modification:

Following the May 9, 2018, public hearing, CDSS is amending subsection 87765(e) to add the additional language “at the facility site,” for clarity and consistency to specify a location where the final determination of the appeal will be personally delivered to the licensee.

d. Statement of Alternatives Considered

The Department has determined that no reasonable alternative considered or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective as and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

e. Statement of Significant Adverse Economic Impact on Business

The Department has determined that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

f. Testimony and Response (April 23, 2018 through May 9, 2018)

These regulations were considered as Item #1 at the public hearing held on May 9, 2018, in Sacramento, California. Written testimony was received from the following during the 45-day comment period from April 23, 2018 through May 9, 2018. The public comment period closed at 5:00 p.m. on May 9, 2018.

The following written testimony was received during the 45-day comment period:

Jody L. Spiegel, Staff Attorney, California Advocates for Nursing Home Reform (CANHR)

Section 87764(c)(4)

1. COMMENT:

CANHR recommends that the subsection be amended as follows:

(4) (A) In the case of a suspension of new admissions under subsection (a)(1), A a
factual description of the nature of the deficiency fully stating the manner in which the deficiency presents a direct and immediate risk to the health, safety, or personal rights of a resident.

(B) In the case of a suspension of new admissions under subsection (a)(2), a
factual description of the failure to pay the assessed fine and exhaustion of
appeal rights.

CANHR recommends that the regulation be amended to include the additional set of circumstances under which a suspension of new admissions may be ordered, i.e., the failure to pay assessed fines as set forth in subsection (a)(2).

RESPONSE:

CDSS is amending the proposed regulation to reflect the requested change.

The Department is amending subsection 87764(c)(4), to read:

(4) (A) In the case of a suspension of new admissions under subsection (a)(1), A a factual description of the nature of the deficiency fully stating the manner in which the deficiency presents a direct and immediate risk to the health, safety, or personal rights of a resident.

(B) In the case of a suspension of new admissions under subsection (a)(2), a factual description of the failure to pay the assessed fine and exhaustion of appeal rights.

Section 87764(e)

2. COMMENT:

CANHR recommends that the subsection be amended as follows:

(e) The order of the Department imposing the suspension of new admissions is effective immediately upon notice and shall continue ~~pending~~ during the pendency of any appeal or request for review. The facility shall not admit new residents during the effective dates of the suspension.

CANHR recommends that the regulation be amended for clarity and consistency with Health and Safety Code section 1569.545(f) which states that the suspension of new admissions “shall not be stayed pending the facility’s appeal or request for review,” i.e., that the ban will not continue during any appeal or request for review. The proposed phrase “shall continue pending any appeal” is confusing, and could mean that the ban will continue until there is an appeal, which contradicts the statutory language and intent. The proposed amendment also clarifies that the ban will continue during any appeal, or request for review, and that new residents may not be admitted during the effective dates (plural) of the suspension.

RESPONSE:

CDSS is amending the proposed regulation to be consistent with Health and Safety Code section 1569.545(f) which states that the suspension of new admissions “shall not be stayed pending the facility’s appeal or request for review.”

CDSS is amending the proposed regulation to change the word “date” to the plural form “dates”.

The Department is amending subsection 87764(e), to read:

(e) The order of the Department imposing the suspension of new admissions is effective immediately upon notice and shall ~~continue pending any appeal review~~ not be stayed and remains in effect throughout the appeals process. The facility shall not admit new residents during the effective dates of the suspension.

Selena Coppi Hornback, Associate Director Public Policy, California Assisted Living Association (CALA)

Section 87764(g)(1)

3. COMMENT:

(g) Once the Department has determined the violation(s) has been corrected or fines paid, as specified in subsection (f) above, the Department shall notify the licensee in writing of the order to remove the suspension of new resident admission by personal delivery to the licensee.

CALA Comment: The regulations should specify a timeline or the Department to notify a licensee that a suspension has been lifted. Once the issue has been corrected, the Department should work swiftly to ensure that something this significant that affects both providers and people who need care, is dealt with in an expedient manner. The notice should also be provided via e-mail or fax in addition to the personally delivered letter to make the process timelier.

CALA suggests the Department notify a licensee immediately, but no later than two (2) business days that their suspension has been corrected or fines paid and provide the notice via e-mail or fax in addition to in-person delivery.

RESPONSE:

CDSS is amending the proposed regulation to add a two (2) business day timeframe in which the Department shall notify the licensee in writing and by personal delivery, at the facility site, of the order to remove the suspension of new resident admissions. The Department did not accept the proposed modification to include the additional notification via email or fax.

The Department is amending subsection 87764(g) to read:

(g) Once the Department has determined the violation(s) has been corrected or fines paid, as specified in subsection (f) above, the Department shall notify the licensee in writing within two (2) business days of the order to remove the

suspension of new resident admission by personal delivery to the licensee at the facility site.

Section 87765(a)

4. COMMENT:

Proposed Regulation: [A] licensee or his/her representative may appeal the decision of the Department to suspend new admissions by requesting in writing a review of the suspension of new admissions order within 10 working days of receipt of the order.

CALA Comment: Licensees are required to request an appeal of the Department's decision to suspend new admissions within 10 working days, yet the Department does not have an enforced timeline for which they must respond to the appeal. Suspending new admissions impacts providers and people who need care and an appeal should be dealt with quickly.

CALA suggests the Department be required to respond to a licensee's appeal within two (2) business days of submission.

RESPONSE:

CDSS is not amending the current proposed regulations to reflect CALAs requested change. It is not the Department's practice to provide an acknowledgment of receipt of a request for appeal review to licensees.

The Department is amending section 87765(a) to read:

~~(a) On a form provided by the Department, a~~ A licensee or his/her representative may appeal the decision of the Department to suspend new admissions by requesting in writing a review of the suspension of new admissions order within ten (10) working business days of receipt of the order. This review shall be conducted by the Deputy Director of the Community Care Licensing Division

Section 87765(d)

5. COMMENT:

Proposed Regulation: The Deputy Director shall conduct the review and render a final decision in a timely manner.

CALA Comment: Licensees are required to adhere to a 10-day timeframe for submitting an appeal to a suspension of admissions. The regulations should define the timeline required for the Department to respond.

CALA suggests the Department be required to conduct a review to a licensee's appeal and render a decision within two (2) business days of submission.

RESPONSE:

CDSS is amending the proposed regulation to add a (5) business day timeframe in which the Deputy Director shall conduct the review and render a final decision.

The Department is amending subsection 87765(d) to read:

(d) The Deputy Director shall conduct the review and render a final decision ~~in a timely manner within five (5) business days from receipt of the written appeal~~. If the Deputy Director determines that the suspension order was not issued in accordance with applicable statutes and regulations of the Department, or that other circumstances existed, he or she shall have the authority to amend or dismiss the suspension order.